

## Remarks

Claims 1-22 are pending. Applicants have amended claims 1, 5, 8, 16, and 21. Claims 23-27 have been cancelled. Claims 1, 5, and 8 are amended to state that the lecithin product has an acetone insolubles content of at least 72%. Support for this amendment can be found in Examples 1-5. Claims 1 and 8 are further amended to state that the lecithin product has a phosphatidylcholine content of from 9% to 28%. Support for this amendment can be found in Examples 1-4. Claim 8 is also amended to state that the retained solids are dried. Support for this amendment can be found in canceled claim 23. Claims 16 and 21 are amended to remove an inconsistency. No new matter has been added by these claim amendments.

### 1. Rejection under 35 U.S.C. § 112

Claims 16 and 21 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant is grateful to the Examiner for suggesting an amendment to overcome the rejection. The suggested amendment has been made. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

### 2. Rejection under 35 U.S.C. §102

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Umeda (U.S. Patent No. 5,833,858).

Umeda teaches a method for highly concentrating acidic phospholipids from lecithin by solvent fractionation. The Office Action directed Applicant's attention to Table 2 of Umeda. Table 2 discloses, among other things, the phospholipids composition of material 1 and material 2. These materials are the starting materials for the Umeda Examples 1-6 and the Comparative Examples 1-4. These two starting materials do not disclose an acetone insolubles content, required by amended claim 1. In fact, Umeda does not disclose any acetone insolubles data for Examples 1-6 or Comparative Examples 1-4.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference. Since Umeda fails to disclose any teaching of acetone insolubles, as required by present claim 1, as amended, Umeda fails to disclose each and every limitation of amended claim 1. As such, claims 1-3 are novel over Umeda. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Losch et al. (U.S. Patent No. 5,310,734)

Losch et al. teach a phospholipid composition exhibiting a phosphatidylcholine content of at least 80%. Applicant's claim 1, as amended, is directed to a lecithin product having phosphatidylcholine content of from 9% to 28%.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since Losch et al. fail to disclose a lecithin product having a phosphatidylcholine content of from 9% to 28%, as required by present claim 1, as amended, Losch et al. fail to disclose each and every limitation of amended claim 1. As such, claims 1-4 are novel over Losch et al. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Pardun (U.S. Patent No. 3,661,946).

Pardun teaches a process for the separation of phosphatide fractions from mixtures containing them. The Office Action directed Applicant's attention to column 6, test 2 of Pardun. Test 2 discloses a non-inventive composition to compare to the Pardun inventive composition. In Pardun, the invention is the separation of choline lecithin and cephalin. In test 2, the acetone insolubles of the starting product is 67% ( $166/247.5 \times 100$ ) The acetone insolubles of the extract is 62.7% ( $27/43 \times 100$ ). The acetone insolubles of the residue is 68.3% ( $138/202 \times 100$ ). This extract and residue do not disclose the acetone insolubles content, as required by amended claim 1.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since Pardun fails to disclose any teaching of acetone insolubles within the range of

present claim 1, as amended, Pardun fails to disclose each and every limitation of claim 5, which depends from amended claim 1. As such, claim 5 is novel over Pardun. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

### **3. Rejection under 35 U.S.C. §103**

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka et al. (U.S. Patent No. 6,749,881) in view of Losch et al. (U.S. Patent No. 5,310,734) or Umeda (U.S. Patent No. 5,833,858).

The teachings of Losch et al. and Umeda are discussed above.

Kataoka et al. teach a packaged emulsified beverage having a diglyceride and a phospholipid. The Office Action directed Applicant's attention to Table 5 of Kataoka et al. There is no teaching in Kataoka et al. as to the properties possessed in the lecithin used in Table 5.

Present claim 6 depends from amended claim 1 and is directed to a liquid or dry beverage, food or nutritional product that includes a lecithin product possessing phospholipids of up to about 75 wt.% of total dry matter, an oil and sugar content of about 10 wt.% or less of total dry matter, an acetone insolubles content of more than 72%, and a phosphatidylcholine content of from 9% to 28%. The deficiencies of Kataoka et al. are not removed by combining Kataoka et al. with either Losch et al. or Umeda, as urged in the Office Action.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, since the teachings of Kataoka et al. combined with either Losch et al. or Umeda fail to teach or suggest all of the claim limitations of Applicant's claim 6, which depends from amended claim 1, and further that there is no motivation by one of ordinary skill in the art for employing limitations present in Applicant's claim 6 which depends from amended claim 1, not present in the combination with Kataoka et al. and Losch et al. or with Kataoka et al. and Umeda. Reconsideration and withdrawal of this

ground of rejection is respectfully requested.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka et al. (U.S. Patent No. 6,749,881) in view of Pardun (U.S. Patent No. 3,661,946).

Both Kataoka et al. and Pardun are discussed above. Present claim 7 which depends from amended claim 5 is directed to a liquid or dry beverage, food or nutritional product that includes a lecithin product possessing an acetone insolubles content of more than 72% and a sugar content of less than 1.0 wt.% of total dry matter. Combining Kataoka et al. and Pardun does not make claim 7, which depends from amended claim 5, as obvious. The deficiencies of Kataoka et al. is not removed by combining Kataoka et al. with Pardun, as urged in the Office Action.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, since the teachings of Kataoka et al. combined with Pardun fail to teach or suggest all of the claim limitations of Applicant's claim 7, which depends from amended claim 5 and further that there is no motivation by one of ordinary skill in the art for employing limitations present in Applicant's claim 7 which depends from amended claim 5, not present in the combination with Kataoka et al. and Pardun. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 8-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardun (U.S. Patent No. 3,661,946).

Pardun is discussed above. Pending claims 8-22, as amended, are directed to a method for producing an improved lecithin product comprising the steps of:

- (a) providing a crude lecithin material;
- (b) mixing the crude lecithin material with a blend of ethanol and water to form a first mixture;

- (c) retaining solids from step (b);
  - (d) mixing the retained solids in step (c) with a blend of ethanol and water to form a second mixture; and
  - (e) retaining solids from step (d) and drying the retained solids as an improved lecithin product;
- wherein the lecithin product has an acetone insolubles content of more than 72% and a phosphatidylcholine content of from 9% to 28%.

Pardun is deficient regarding any teaching of an acetone insolubles content of more than 72% and a phosphatidylcholine content of from 9% to 28%.

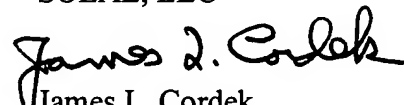
In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, since the teachings of Pardun fails to teach or suggest all of the claim limitations of Applicant's claims 8-22, as amended, and further that there is no motivation by one of ordinary skill in the art for employing limitations present in Applicant's claims 8-22 not present in Pardun. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. If any additional fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-0421.

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